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*Attorneys for Defendants*  
*C. R. Bard, Inc. and*  
*Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

IN RE: Bard IVC Filters Products Liability  
Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION FOR  
LEAVE TO FILE UNDER SEAL  
CERTAIN EXHIBITS IN  
SUPPORT OF BARD'S MOTION  
TO EXCLUDE THE OPINIONS  
OF DAVID KESSLER, M.D. AND  
MEMORANDUM OF LAW IN  
SUPPORT**

Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively  
"Bard") hereby respectfully move this Court, pursuant to the Stipulated Protective Order  
(Doc. 269), Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for  
leave to file under seal certain exhibits attached in support of Bard's Motion to Exclude  
the Opinions of David Kessler, M.D. and Memorandum of Law in Support. These  
exhibits, contain certain trade secrets and confidential information that are protected under

the Stipulated Protective Order, warranting protection from public disclosure. Accordingly, there is good cause to grant Defendants' Motion for Leave to File Under Seal Certain Exhibits in Support of Bard's Motion to Exclude the Opinions of David Kessler, M.D. and Memorandum of Law in Support. Defendants have notified Plaintiffs of their intent to file this Motion. Plaintiffs have agreed to the filing of such motions in the past; however, to date, Plaintiffs' have not yet responded to Defendants' attempts to meet and confer on whether Plaintiffs oppose the Motion once Plaintiffs have had an opportunity to review the documents in issue. A list of the Exhibits sought to be sealed are attached hereto as Exhibit A.

### **ARGUMENT AND CITATION OF AUTHORITY**

"When a court grants a protective order for information produced during discovery, it already has determined that 'good cause' exists to protect this information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002). *See also, Medicis Pharm. Corp. v. Acella Pharm., LLC*, CV 10-1780-PHX-JAT, 2012 WL 2260928 at \*2 (D. Ariz. June 15, 2012) (sealing exhibits related to "Medicis' marketing strategy, Acella's product formulation,...various e-mails and deposition transcripts, viscosity test data, sales and marketing information, and various other documents" because "[m]uch of this information has been previously sealed by the Court, has been designated as confidential by the parties pursuant to the protective order in this case, or could otherwise potentially harm the parties if released publicly because of its confidential and sensitive nature.").

Certain exhibits to Bard's Motion to Exclude the Opinions of David Kessler, M.D., specifically Exhibit A (Dr. Kessler's Expert Report), Exhibit B (Dr. Kessler's Supplemental Expert Report), Exhibit C (Dr. Kessler's Second Supplemental Expert Report), and Exhibit D (Dr. Kessler's Schedules), (collectively "Reports"), contain pieces of highly competitive, confidential, proprietary information that warrant protection under Federal Rule of Civil Procedure 26(c)(1)(G) because the documents are not made public

1 by Bard and, if obtained by Bard's competitors, could give an unfair economic advantage  
 2 to those competitors. *Blanchard & Co., Inc. v. Barrick Gold Corp.*, No. 02-3721, 2004  
 3 WL 737485, at \*5 (E.D. La. Apr. 5, 2004) (citing *Pansy v. Borough of Stroudsburg*, 23  
 4 F.3d 772, 786 (3d Cir. 1994)). Dr. Kessler's Reports cite and extensively quote dozens of  
 5 confidential Bard documents, including technical and design files, testing documents,  
 6 internal adverse event investigations and analysis, design and risk management  
 7 documents, and numerous internal e-mails between high-level Bard employees. The  
 8 Reports quote so extensively from confidential documents that filing the Reports is akin to  
 9 filing the documents themselves. Except for a small number of publicly available  
 10 documents, all of the Bard documents cited in the Reports were produced to Plaintiffs as  
 11 "Confidential – Subject to Protective Order" on each page pursuant to Stipulated  
 12 Protective Order (Doc. 269) ¶ 6.

13 The public disclosure of these exhibits would reveal confidential, proprietary and  
 14 trade secret information and would create a heightened risk of irreparable harm to Bard's  
 15 competitive business concerns. Further, its inclusion in the public record would not only  
 16 harm Bard because of the trade secrets and confidential information it contains, but it  
 17 would also eviscerate the significant time and resources Bard has expended in protecting  
 18 its business information. The potential for abuse and for competitive loss are real.  
 19 Accordingly, Defendants request that the exhibits identified in Exhibit A be sealed.

20 RESPECTFULLY SUBMITTED this 24th day of August, 2017.

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**Attorneys for Defendants C. R. Bard, Inc. and  
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**CERTIFICATE OF SERVICE**

I hereby certify that August 24, 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

s/Matthew B. Lerner  
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**EXHIBIT A**

**DOCUMENTS PROPOSED TO BE FILED UNDER SEAL**

Defendants request they be permitted to file under seal the following documents in support of their Motion to Exclude the Opinions of David Kessler, M.D. and Memorandum of Law in Support.

- Exhibit A. Expert Report of David Kessler, M.D.
- Exhibit B. Supplemental Expert Report of David Kessler, M.D.
- Exhibit C. Second Supplemental Expert Report of David Kessler, M.D.
- Exhibit D. Schedules Attached to Expert Report of David Kessler, M.D.